

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IMELDA DEASON

Plaintiff,

v.

NATIONWIDE INSURANCE COMPANY
OF AMERICA

Defendant.

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CIVIL ACTION NO. 5:22-cv-00012

NOTICE OF REMOVAL

Defendant Nationwide Insurance Company of America (“Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the lawsuit captioned *Imelda Deason v. Nationwide Insurance Company of America*; Cause No. 2021CI25467; In the 285th Judicial District of Bexar County, Texas.

**I.
BACKGROUND**

1. Plaintiff Imelda Deason (hereinafter “Plaintiff”) initiated the present action by filing her Original Petition in Cause No. 2021CI25467; In the 285th Judicial District of Bexar County, Texas on December 14, 2021 (the “State Court Action”). *See* Plaintiff’s Original Petition, attached as **Exhibit A**.

2. Defendant appeared and answered on January 7th, 2022, asserting a general denial to the claims and allegations made in Plaintiff’s Original Petition. *See* Defendant’s Original Answer, attached as **Exhibit B**.

3. Pursuant to 28 USC § 1446(a) all a copy of all process, pleadings, and orders served upon Defendant in the State Court Action are incorporated in **Exhibit A**. A full copy of the state court file has been requested and will be filed upon receipt.

4. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through her attorney of record, and to the clerk of the 285th Judicial District Court of Bexar County, Texas.

5. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Defendant of Plaintiff's Original Petition and less than one year after the commencement of this action.

II. JURISDICTION

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441 because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

A. Diversity of Parties

7. Plaintiff is domiciled in Bexar County, Texas. *See Exhibit A, ¶ II.* Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiff is a citizen of the State of Texas.

8. Nationwide Insurance Company of America is organized under the laws of Ohio and maintains its principal place of business in Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Nationwide is a citizen of the State of Ohio.

9. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

B. Amount in Controversy

10. It is facially apparent from Plaintiff's live petition that the amount in controversy in this case exceeds \$75,000 rendering removal proper. Generally, "the sum demanded in good faith in

the initial pleading shall be deemed to be the amount in controversy.”¹ Removal is proper if it is “facially apparent” from the complaint that the claims asserted exceed the jurisdictional amount.² In addition, penalties, exemplary damages, and attorneys’ fees are included as part of the amount in controversy.³

11. Here, Plaintiff seeks “monetary relief over \$1 million.” **Exhibit A**, Plaintiff’s Original Petition, at ¶ IX. The threshold for diversity jurisdiction, \$75,000, is therefore met by the allegations of Plaintiff’s Original Petition

12. Plaintiff further seeks compensation for (1) actual damages, (2) treble damages, (3) attorney’s fees; and (4) pre- and post-judgment interest. **Exhibit A**, Plaintiff’s Original Petition, at ¶ IX. Plaintiff has alleged that Defendant’s conduct was wrongful and done knowingly, entitling her to a trebling of actual damages under Texas Insurance Code Chapter 541. *See Exhibit A*, ¶ X; Tex. Ins. Code sections 541.002 & 541.152. Penalties, exemplary damages, and attorneys’ fees are included as part of the amount in controversy.⁴

13. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibit A*. Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

¹ 28 U.S.C. § 1446(c)(2); *see also Santiago v. State Farm Lloyds*, No. 7:13-CV-83, 2013 WL 1880845, at *1 (S.D. Tex. May 3, 2013).

² *Puckitt v. Wells Fargo Bank, N.A.*, No. G-09-0056, 2010 WL 2635626, at *3 (S.D. Tex. June 28, 2010) (citing *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995)).

³ *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

⁴ *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

**III.
CONCLUSION**

14. Removal of this action under 28 U.S.C. § 1441 is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. § 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

15. WHEREFORE, Defendant Nationwide General Insurance Company hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/ Patrick M. Kemp

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**ATTORNEYS FOR DEFENDANT
NATIONWIDE INSURANCE COMPANY
OF AMERICA**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served electronically via CM/ECF and Certified Mail this the 7th day of January, 2022 to:

Clare P. Rodgers
Pace Rodgers Law PLLC
310 W. Sunset, Suite 203
San Antonio, Texas 78209
croders@pacerodgerslaw.com

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/s/ Patrick M. Kemp
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